

App. Serial No.: 10/726,070
Atty. Docket No.: 0003-033P2

REMARKS

These remarks are in response to the Office Action dated April 13, 2005, which has a shortened statutory period for response set to expire July 13, 2005. A one month extension, to expire August 15, 2005 (August 13, 2005 being a Saturday and August 14, 2005 being a Sunday), is requested in a petition filed herewith.

Claims

Claims 1-20 are pending in the above-identified application. Claims 1-20 are rejected over prior art. Claim 10 is amended. Claims 1-9 and 11-20 remain as filed. Reconsideration is requested.

Claims 1, 2, 6, and 9 are rejected under 35 U.S.C. § 102 (b) as being clearly anticipated by Atkinson et al. (USPN 2,946,626). The Examiner writes (in part):

Atkinson et al. teaches a pump for moving a product comprising a vacuum chamber (8) having a product inlet (9), a product outlet (11), a vacuum port (28), and an agitator inlet port (17, 18), a vacuum source (25) coupled to the vacuum port for providing a vacuum to the vacuum chamber whereby the product is drawn into the chamber through the product inlet, and a product discharge valve (13) coupled to the product outlet for allowing the product to be removed from the vacuum chamber, and wherein the agitator inlet port is disposed such that an agitating fluid entering the through agitator inlet port will impinge on the product prior to the product entering the product discharge valve (column 3 lines 63-75).

Applicant respectfully traverses.

The standard for anticipation is set forth in M.P.E.P. § 2131 as follows:

"A claim is anticipated only if each and every element is set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in ... the claim." *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

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Claim 1 recites "wherein said agitator inlet port is disposed such that an agitating fluid entering said chamber through said agitator inlet port will impinge on said product prior to said product entering said product discharge valve". Atkinson et al. do not teach or suggest "an agitator inlet port disposed such that an agitating fluid entering said chamber through said agitator inlet port will impinge on said product prior to said product entering said product discharge valve", as recited by Claim 1. Rather, Atkinson et al. disclose two air inlets (17, 18) that are used to produce a fluidized stream of pulverulent material out of a discharge outlet (19). For example, at Column 4, Lines 21-27 Atkinson et al. provide:

The actuator 13 is rotated at a speed related to the admission of air through the air inlets 17 and 18 so that the volume of pulverulent material carried to the discharge outlet 19 is sufficient to produce a fluidized stream of the material characterized by having a material to air ratio by weight of approximately 25 or more to one, respectively.

Furthermore, as shown in Fig. 2, air inlets (17, 18) are located below the actuator 13, which is characterized by the Examiner as the product discharge valve. Therefore, air from air inlets (17, 18) could not possibly "impinge on said product prior to said product entering said product discharge valve", as recited by Claim 1. Indeed, air inlets 17 and 18 are not even part of vacuum chamber 8, but are disposed on the opposite side of product discharge valve 13 from vacuum chamber 8. Therefore, the cited reference does not disclose "a vacuum chamber having ... an agitator inlet port," as recited in Claim 1.

Because Atkinson et al. do not disclose all the limitations of Claim 1, Atkinson et al. do not anticipate Claim 1. Claims 2, 6, and 9 depend either directly or indirectly, from Claim 1, and are therefore distinguished from the cited prior art for at least the reasons provided above with respect to Claim 1.

Claim 9

The Examiner writes (in part):

Atkinson et al. further teaches wherein the product outlet is disposed near the bottom of the vacuum chamber, and the agitator port is disposed adjacent the product outlet.

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Contrary to the Examiner's assertion, Atkinson et al. do not teach "an agitator inlet port disposed adjacent the product outlet". Instead, as shown in Fig. 2, the air inlets (17, 18) are below product outlet (11), and are isolated from product outlet (11) by the air interlock created by actuator (13). Therefore, there is no agitator inlet port in vacuum chamber 8.

Furthermore, it would be undesirable to relocate air inlets 17 and 18 above actuator (13) in the device of Atkinson et al., because agitating dry pulverulent materials would likely cause filters (21) to become clogged faster, as pulverulent material would likely become airborne due to the light weight and fine consistency. Further, if inlets 17 and 18 were coupled directly into chamber 8, chamber 8 would cease to be a vacuum chamber. Therefore, such a modification would render the system of the cited reference unsuitable for its intended purpose.

For the foregoing reasons, Applicants respectfully assert that Atkinson et al. do not teach all the limitations of Claim 9. Therefore, Atkinson et al. do not anticipate Claim 9.

Claims 10, 11, 14-19

Claims 10, 11, 14-19 are rejected under 35 U.S.C. § 102 (b) as being clearly anticipated by Atkinson et al. (USPN 2,946,626). The Examiner writes (in part):

Atkinson et al. teaches a method for moving a product comprising drawing the product into a vacuum chamber (8), removing the product from the vacuum chamber via a product discharge valve (13), and agitating the product with an agitating fluid (17, 18) to prevent clogging of the product discharge valve.

Applicant respectfully requests reconsideration in view of the amendments made herein.

As amended herein, Claim 10 recites "agitating said product with an agitating fluid prior to said product entering said product discharge valve to prevent clogging of said discharge valve." Atkinson et al. do not teach or suggest that the agitator be used as a means to prevent clogging in the discharge valve as recited in Claim 10. Rather, Atkinson et al. teach that air inlets (17, 18) are used to move material after it is discharged from discharge valve (13). For example, Atkinson et al. state;

These air inlets 17 and 18 are arranged opposite each other so that they will simultaneously discharge between adjacent blades 16 while communicating with the discharge outlet 19 so that the pulverulent material between such blades will be simultaneously fluidized and

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discharged outwardly through the discharge outlet 19 in a substantially solid fluidized flow" (Column 3, Lines 63-70).

Atkinson et al. do not teach or suggest that the inlets be used to prevent clogs in the discharge valve on the vacuum chamber side of the discharge valve as described by Applicant's present invention. As noted in Claim 1 and Figs. 1, 4, 5A, 5B, and 5C of Applicant's original specification, agitator inlet (27) is positioned in vacuum chamber 20 above pressure valve (26) and is operative to prevent clogs that would prevent material from entering pressure valve (26). Atkinson et al. disclose a completely different location and function for inlets (17, 18). In particular, air from inlets (17, 18) is used to discharge material after it has already passed through the actuator (13). Air from inlets (17, 18) would have no effect whatsoever on clogs that might occur in the terminal portion 10 of suction conduit 7.

For the above reasons, Applicants respectfully assert that Atkinson et al. do not teach all of the limitation of amended Claim 10. Therefore, Atkinson et al. do not anticipate Claim 10. Claims 11 and 14-19 depend either directly or indirectly from Claim 10 and are therefore distinguished from the prior art for at least the reasons provided above with respect to Claim 10.

Claim 19

Regarding Claim 19, Atkinson et al. do not teach pumping wine product or any other liquid or semi-liquid product. Rather, Atkinson et al. suggest only the pumping of pulverulent materials such as flour, chemicals, and the like (Column 1, Lines 15-20). Because Atkinson et al. do not teach all the limitations of Claim 19, Atkinson et al. do not anticipate Claim 19.

Claim 20

Claim 20 is rejected under 35 U.S.C. § 102 (b) as being clearly anticipated by Atkinson et al. (USPN 2,946,626). The Examiner writes:

Atkinson et al. teaches a pump comprising vacuum means for drawing a product and a fluid mixture into a chamber, separating means (8) for separating the product from the fluid, agitating means (17, 18) for agitating the product, and removal means (13) for removing the product from the chamber.

Applicant respectfully traverses.

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M.P.E.P. § 2106 sets forth the procedure for examination of means plus function claims, and provides:

Where means plus function language is used to define the characteristics of a machine or manufacture invention, claim limitations must be interpreted to read only on the structures or materials disclosed in the specification and "equivalents thereof." (Two *en blanc* decisions of the Federal Circuit have made clear that the Office is to interpret means plus function language according to 35 U.S.C. 112, sixth paragraph. In the first, *In re Donaldson*, 16 F.3d 1189, 1193, 29 USPQ2d 1845, 1848 (Fed. Cir. 1994), the court held:

The plain and unambiguous meaning of paragraph six is that one construing means-plus-function language in a claim must look to the specification and interpret that language in light of the corresponding structure, material, or acts described therein, and equivalents thereof, to the extent that the specification provides such disclosure. Paragraph six does not state or even suggest that the PTO is exempt from this mandate, and there is no legislative history indicating that Congress intended that the PTO should be. Thus, this court must accept the plain and precise language of Paragraph six.

Applicant respectfully avers that nothing in the cited reference can be fairly characterized as an equivalent to the means for "agitating" disclosed in Applicants' specification. For example, Applicant's specification discloses an "agitator inlet port disposed such that an agitating fluid entering said chamber through said agitator inlet port will impinge on said product prior to said product entering said product discharge valve". According to Applicant's disclosure, an agitating fluid is injected into the vacuum chamber through a port in the vacuum chamber. In contrast, the cited reference discloses air inlets operative to transport pulverulent material that has already exited the vacuum chamber out of a discharge outlet. Accordingly, Claim 20 when properly interpreted according to 35 U.S.C. § 112, Paragraph 6 does not read on the structure of the cited reference. Therefore, Applicant respectfully request reconsideration and withdrawal of the rejection of Claim 20 under 35 U.S.C. § 102.

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Claims 3-5, 7, 8, 12, and 13

Claims 3-5, 7, 8, 12, and 13 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Atkinson et al. (2,946,626). The Examiner writes (in part):

Atkinson et al. teaches all of the limitations of Claims 3 and 12, but is silent as to a cooling apparatus coupled between the outlet of the air pump and the agitator inlet port. Examiner respectfully submits that cooling apparatus are well known to be couple with fans, blowers, and air pumps, therefore it would have been obvious to someone of ordinary skill in the art at the time of the invention to provide a cooling apparatus coupled between the outlet of the air pump and the agitator inlet port of Atkinson et al. in order to regulate the temperature of the airflow supplied at the agitator inlet port.

M.P.E.P. § 2143 sets forth the requirements of a prima facie case of obviousness:

To establish a prima facie case of obviousness, three basic criteria must be met. First there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

Claims 3-5, 7, 8, 12, and 13 depend indirectly from Claims 1 and 10, respectively, and therefore include all the limitations of their respective base claim. For the reasons provided above, Atkinson et al. do not teach or suggest all the limitations of either of Claims 1 and 10 and therefore, do not teach all the limitations of Claims 3-5, 7, 8, 12, and 13. Therefore, because Atkinson et al. do not teach all the limitations of Claims 3-5, 7, 8, 12, and 13, no prima facie case of obviousness can be established with respect to Claims 3-5, 7, 8, 12, and 13.

Furthermore, with respect to Claims 3-5 and 12-13, Applicant avers that there is no motivation or suggestion in Atkinson et al. to add a means for cooling between that air pump outlet and the agitator. Indeed, it is Applicant's position that adding a cooling apparatus would only add additional cost and components and would frustrate the intended purpose of the device of Atkinson et al. The products pumped with the device of Atkinson et al. are pulverulent products such as flour and dry chemicals. There is no indication that such materials are

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particularly heat sensitive. Therefore, there is no motivation to modify the device of Atkinson et al. to obtain Applicant's claimed invention, and no prima facie case of obviousness can be established with respect to Claims 3-5, 7, 8, 12, and 13.

For the above reasons Applicant requests reconsideration and withdrawal of the rejections under 35 U.S.C. § 103 (a).

Conclusion

For the foregoing reasons, Applicant believes Claims 1-20 are in condition for allowance. Should the Examiner undertake any action other than allowance of Claims 1-20, or if the Examiner has any questions or suggestions for expediting the prosecution of this application, the Examiner is requested to contact Applicants' attorney at (269) 279-8820.

Respectfully submitted,

Date: 8/15/05

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CERTIFICATE OF FACSIMILE TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being transmitted via facsimile, on the date shown below, to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, at (571) 273-8300.

Date: 8/15/05

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